

REMARKS

This responds to the Office Action mailed on February 25, 2009.

Claims 1, 4, 14, 15, 17-20, 22-25, 27, 28, 30, 31, 33, 34, 36, 51-53, and 56-59 are amended, claims 2, 3, 11, 12, 32, 43, 55, and 61 are canceled, and no claims are added; as a result, claims 1, 4-10, 13-31, 33-42, 44-54, and 56-60 are now pending in this application.

Claim Objections

Claim 54 was objected to as being a duplicate of claim 55. Applicant has canceled claim 55 to address this objection. As such, Applicant respectfully requests reconsideration and withdrawal of the basis of this objection.

§ 101 Rejection of the Claims

Claims 34-61 were rejected under 35 U.S.C. § 101 as not qualifying as a statutory process. Claims 34 and 61 have been amended to address these rejections. In particular, Applicant now recites “an electronic recognition module” used to automatically identify the person seeking access to the information access portal. Thus, Applicant respectfully requests reconsideration and withdrawal of the rejections of these claims.

§ 112 Rejection of the Claims

Claims 2-4 and 33 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has canceled claims 2 and 3, thereby obviating the rejection of these claims. Further, Applicant has amended claims 4 and 33 to address the § 112 ¶ 2 rejection of these claims. In particular, Applicant has revised the recited “Advanced Patient Management System” to read “patient management system.” Thus, Applicant respectfully requests reconsideration and withdrawal of the rejections of these claims.

Claims 30 and 32 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has canceled claim 32, thereby obviating the rejection of this claim. In addition, Applicant has incorporated the subject matter of claim 32 into intervening claim 30, from which claim 32 previously depended. In particular, Applicant has revised the recited “an

ATM-like system” to “a publicly available terminal.” Thus, Applicant respectfully requests reconsideration and withdrawal of the rejections of these claims.

§ 102 Rejection of the Claims

Claim 33 was rejected under 35 U.S.C. § 102(e) as being anticipated by Leven (U.S. Publication 2004/10172290). Applicant has amended claim 33 to overcome this rejection.

Applicant cannot find in the cited portions of Leven any disclosure of:

a recognition module configured to detect the proximity recognition system in the implantable medical device, uniquely identify the implantable medical device via the proximity recognition system, and authorize access to a person implanted with the implantable medical device to the publicly accessible information access portal

as presently recited in claim 33. Instead, it appears that Leven refers to “the health monitoring device 100 can detect a wireless network connection and upload any collected health indicator data to the healthcare facility computer system.” Leven at ¶ 0048. In particular, Leven’s wireless network detection is initiated from the medical device – not from a separate “recognition module configured to detect the proximity recognition system in the implantable medical device,” as presently recited in Applicant’s claim 33.

Moreover, it appears that claim 1 was rejected under § 103 because “Leven does not disclose the following limitations ... *an implantable medical device adapted to sense and transmit patient health data.*” Office Action at p. 5 (emphasis in original). Claim 33 is similar to claim 1 and includes at least the “implantable medical device” recited in claim 1. As such, Applicant respectfully submits that the Office Action has tacitly acknowledged that Leven fails to disclose elements found in claim 33.

For at least these reasons, Applicant submits that Leven does not anticipate claim 33 and respectfully requests reconsideration and withdrawal of the rejection of this claim.

§ 103 Rejection of the Claims

1. Claims 1-4, 11-20, 26 and 27 were rejected under 35 U.S.C. § 103(a) as being obvious over Leven (U.S. Publication 2004/10172290) and further in view of Kalgren et al. (U.S. Publication 2002/0077562).

Concerning independent claim 1:

Applicant cannot find in the cited portions of Leven any disclosure of:

a recognition module, separate from the implantable medical device, and configured to detect the proximity recognition system in the implantable medical device, uniquely identify the implantable medical device using the proximity recognition system, and authorize access to a person implanted with the implantable medical device to the information access portal.

as presently recited in claim 1. Instead, it appears that Leven refers to “the health monitoring device 100 can detect a wireless network connection and upload any collected health indicator data to the healthcare facility computer system.” Level at ¶ 0048. In particular, Leven’s wireless network detection is initiated from the medical device – not from a separate “recognition module configured to detect the proximity recognition system in the implantable medical device,” as recited in Applicant’s claim 1.

Thus, because Leven, Kalgren, and Siegel fail to disclose, teach, or suggest all elements of claim 1, these references cannot be used to establish a *prima facie* case of obviousness against claim 1 and consequently, Applicant respectfully requests reconsideration and withdrawal of the rejection of this claim.

2. Claims 5-10 were rejected under 35 U.S.C. § 103(a) as being obvious over Leven and further in view of Kalgren et al. and further in view of Walker et al. (U.S. Publication 2002/10013173).

Applicant respectfully submits that the dependent claims 5-10 depend directly or indirectly from independent claim 1. As such, these dependent claims incorporate all the recitations of claim 1. Accordingly, Applicant submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully request

withdrawal of any basis of rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

3. Claims 21, 22, 24, 28-32, 34-36, 43-51, 53 and 61 were rejected under 35 U.S.C. § 103(a) as being obvious over Leven and further in view of Kalgren et al. and further in view of Siegel et al. (U.S. Publication 2001/10051876).

Concerning independent claim 34:

Applicant cannot find in the cited portions of Leven any disclosure of:

detecting, at an electronic recognition module, a proximity recognition system in an implantable medical device implanted in a person;
granting the person access to a publicly accessible information access portal when the electronic recognition system identifies the person;

as presently recited in claim 34. Instead, it appears that Leven refers to “the health monitoring device 100 can detect a wireless network connection and upload any collected health indicator data to the healthcare facility computer system.” Level at ¶ 0048. In particular, Leven’s wireless network detection is initiated from the medical device – not from a separate “electronic recognition module” configured to detect the proximity recognition system in the implantable medical device, as recited in Applicant’s claim 34.

Thus, Applicant because Leven, Kalgren, and Siegel fail to disclose, teach, or suggest all elements of claim 34, these references cannot be used to establish a *prima facie* case of obviousness against claim 34 and consequently, Applicant respectfully requests reconsideration and withdrawal of the rejection of this claim.

Concerning independent claim 61:

Applicant has canceled claim 61, thereby obviating the rejection of this claim.

Concerning remaining dependent claims:

Applicant respectfully submits that the remaining dependent claims 21, 22, 24, 28-32, 35-36, 43-51, 53 depend directly or indirectly from independent claims 1 or 34. As such, these

dependent claims incorporate all the limitations of claims 1 or 34. Accordingly, Applicant submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully request withdrawal of any basis of rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

4. Claims 23 and 52 were rejected under 35 U.S.C. § 103(a) as being obvious over Leven and further in view of Kalgren et al. and further in view of Siegel et al. and further in view of Konrad (U.S. Patent 5,544,320).

Applicant respectfully submits that the remaining dependent claims 23 and 52 depend directly or indirectly from independent claims 1 or 34. As such, these dependent claims incorporate all the limitations of claims 1 or 34. Accordingly, Applicant submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully request withdrawal of any basis of rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

5. Claims 25 and 60 were rejected under 35 U.S.C. § 103(a) as being obvious over Leven and further in view of Kalgren et al. and further in view of Siegel et al. and further in view of Treyz et al. (U.S. Patent 6,526,335).

Applicant respectfully submits that the remaining dependent claims 25 and 60 depend directly or indirectly from independent claims 1 or 34. As such, these dependent claims incorporate all the limitations of claims 1 or 34. Accordingly, Applicant submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully request withdrawal of any basis of rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

6. Claims 37-42 were rejected under 35 U.S.C. § 103(a) as being obvious over Leven and further in view of Kalgren et al. and further in view of Siegel et al. and further in view of Walker et al.

Applicant respectfully submits that the dependent claims 37-42 depend directly or indirectly from independent claim 34. As such, these dependent claims incorporate all the limitations of claim 34. Accordingly, Applicant submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully request withdrawal of any basis of rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

7. Claims 54-59 were rejected under 35 U.S.C. § 103(a) as being obvious over Leven and further in view of Kalgren et al. and further in view of Siegel et al. and further in view of Iliff et al. (U.S. Patent 6,234,964).

Applicant respectfully submits that the dependent claims 54-59 depend directly or indirectly from independent claim 34. As such, these dependent claims incorporate all the limitations of claim 34. Accordingly, Applicant submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully request withdrawal of any basis of rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based

upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION


Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6951

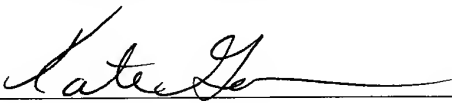
Date May 26, 2009

By 
Suneel Arora
Reg. No. 42,267

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 26th day of May, 2009.

Kate Gannon

Name


Signature